IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.13574 of 2007
AMIT KUMAR SINHA
Versus
THE STATE OF BIHAR & ANR

For the Petitioner : Mr. Manoj Kumar Jha, Advocate.
For the State : Mr. Umesh Prasad Singh, A.P.P.
For O.P. No.2 : Mr. Devendra Nath Jha.

O R D E R

The petitioner who is the sole accused in Kotwali(Ishakchak) P.S. Case No.428 of 2006, has prayed for the quashing of the order dated 14.11.2006 passed therein by the learned Chief Judicial Magistrate, Bhagalpur, whereby he has taken cognizance against the petitioner under Sections 376/511,448,504 and other allied sections of the Penal Code as also Sections 3(i)(x) and (xi) of the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act(hereinafter referred to as "the SC/ST Act").

WEB COPY NOT OFFICIAL

The prosecution story is based on the written report submitted under his thumb impression at about 11.45 P.M. on 9.7.2006 by one Buddhu Dom, impleaded herein as O.P. No.2, alleging inter alia that earlier that night at about 10.30 P.M. the petitioner entered into his house and started teasing his wife, Tetri Devi, with ill motive and also made attempts to rape her and when he remonstrated the accused assaulted him and threw away the household utensils. It is also alleged that the petitioner had committed the same nature of overt acts in the houses of Chulhai Dom, Arjun Dom, Karu Dom and Dhanik Dom, all of whom had accompanied the informant

to the police station for lodging the written report and when protest was raised he had abused them by saying "Sala Dom Tum Logon Ka Hamare Samney Kya Avakat Hai, Tum Logon Ki Bahu Beti Hum Logon Ki Rakhail Hai." It is said that on hulla being raised no body came to his rescue as all the inmates of the mohalla were afraid as similar attempts and overt acts had been committed earlier by the petitioner.

It has been submitted by the learned counsel for the petitioner that he is a practicing lawyer of the Civil Courts at Bhagalpur for the last 20 years and his father was also a prominent advocate of the said court and they belong to a respectable family. It was also submitted that he has been implicated in this case falsely at the instance of the police personnel since the petitioner had filed criminal case, being Complaint Case No.1103 of 1997, in the court of the learned Chief Judicial Magistrate, Bhagalpur, against some police personnel of Bhagalpur who on 18.11.1997 had taken active part in ransacking the court room of Sri D.N. Barai, the then Ist Additional Sessions Judge, Bhagalpur, had assaulted and humiliated him and they had also resorted to vandalism whereby several advocates had also sustained injuries. In support of his submission, the learned counsel for the petitioner has annexed a copy of the complaint petition as Annexure-2 and has also brought on record the judgment passed therein by the learned Chief Judicial Magistrate, Bhagalpur on 11.12.2007(Annexure-3), whereby two police officers were convicted. Copy of an affidavit purported to have been jointly

WEB COPY NOT OFFICIAL

sworn by the informant and his wife, Tetri Devi, has also been brought on record as Annexure-4.

On going through the materials available on the record and hearing the submissions of the counsels for the parties, I am of the confirmed view that a prima facie case cannot be said to have been made out for the allegations made out against the petitioner in the F.I.R. is highly improbable and no common man in his ordinary senses would accept the allegations as gospel truth. It is difficult to forsee how a single man would enter into the house of a person with the intention to outrage the modesty of his wife and none in the village or the community or even the husband would come to her rescue.

After a long delay a counter affidavit has eventually been filed in this Court on behalf of the informant wherein he has stated that he is no longer willing or ready to proceed with the case and had eventually filed a joint compromise petition before the learned Chief Judicial Magistrate, Bhagalpur.

WEB COPY NOT OFFICIAL

Although the charge sheet has been submitted under various Sections including 376/511 I.P.C. and Section 376 I.P.C. is not compoundable , it would be apparent from a reading of the written report submitted by the informant that the ingredient of an offence under Section 376 I.P.C. is not made out and at best an offence under Sections 354/511 I.P.C., if the allegations as made in the written report is to be believed, is made out and Section 354 I.P.C. has been made compoundable under the provisions of Section 320 Cr.P.C..

Due regard being had to the nature of allegation made in the

written report which does not constitute an offence under Section 376 I.P.C. and the affidavit filed by the informant and his wife regarding their disinterestedness in pursuing the criminal proceedings, I am of the opinion that no gainful purpose would be served in keeping the proceeding alive.

Accordingly, the impugned order taking cognizance against the petitioner, for the reasons stated above, is quashed and the application is allowed.

(Abhijit Sinha,J)

Patna High Court, Patna.
Dated: The 20th of August, 2008.
Pradeep Srivastava/A.F.R.

WEB COPY NOT OFFICIAL